



April 5, 2024

VIA CFTC PORTAL

Christopher J. Kirkpatrick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st St., N.W.
Washington, D.C. 20581

Re: Amendment to ICE NGX Canada Inc. Rules - Submission Pursuant to Section 5c(c)(1) of the Commodity Exchange Act and CFTC Regulation § 40.6(a): Omnibus CPA Amendments

Dear Mr. Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended, (“Act”) and Commodity Futures Trading Commission (“Commission”) Regulation 40.6(a), ICE NGX Canada Inc. (“ICE NGX”) is submitting this self-certification relating to amendments to the ICE NGX Contracting Party Agreement (“CPA”). The CPA functions as the rulebook for ICE NGX’s exchange and clearinghouse operations and is a “rule” as that term is defined under Commission Regulation 40.1(i).

1. Overview

ICE NGX is hereby self-certifying certain CPA amendments that were previously described in a self-certification titled “CPA Amendments - Liquidation Procedures” submitted on March 5, 2024. The following groups of CPA amendments were inadvertently missed in that March 5, 2024 submission, each as further described below:

- guarantee of Contracting Party Affiliate;
- Net or Set-Off;
- authority to Act in a default and Event of Default; and
- contingent Revocation Obligations.

The text of the amended CPA provisions relating to these “missed” amendments is attached as Appendix A to this letter, shown as changes against the CPA amendments self-certified on March 5, 2024.

In addition to certain non-substantive amendments, ICE NGX is also amending the CPA relating to:

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- introduce a definition of “ICE NGX Indices”;
- update the definition of “Failure to Pay” and the related operative provision;
- correct the total asset test in the Minimum Qualification Requirements;
- specify the pro rata determination of concurrent demands under the Deposit Agreement; and
- provide greater clarity and transparency regarding Variation Margin.

The text of the amended CPA provisions relating to these additional amendments is attached as Appendix B to this letter.

Collectively, the amendments shown in Appendix A and the additional amendments shown in Appendix B are referred to as the “Amendments”. ICE NGX intends to implement the Amendments, as well as all of the CPA amendments self-certified on March 5, 2024, on May 1, 2024 or on such later date as ICE NGX may designate.

Note: All capitalized terms not otherwise defined herein have the meaning given to them in the CPA.

2. Details of Rule Changes

Failure to Pay

The amendments clarify the definition of Failure to Pay to provide. The Amendments also update the process relating to a Failure to Pay by Exchange to align the language with other related provisions in the CPA.

Minimum Qualification Requirements (“MQR”)

The Amendments correct the description of the total assets test that is part of the Minimum Qualification Requirements (“MQR”). The MQR establishes the base-level criteria that must be met by an applicant to become a Contracting Party, and on an ongoing basis by each Contracting Party. The MQR requires that a Contracting Party, at all times, (i) be a business entity - i.e., not an individual - and (ii) meet a prescribed financial test, in either net worth or total assets, or be controlled, directly or indirectly, by a business entity that meets the prescribed financial test.

The Amendments correct the description of the total asset test, by removing the word “tangible”. “Tangible total assets” is not typically stated in financial statements, and therefore “total assets” is a more transparent standard to be met. Moreover, ICE NGX is of the view that a “total assets” test achieves the same objective as does the test as currently drafted, while not materially increasing the risk to ICE NGX and other Contracting Parties.

Guarantee of Contracting Party Affiliate - Terms and Conditions

The Amendments clarify that the guarantee by a Contracting Party of the obligations of each of its Contracting Party Affiliates, provided under current section 3.3.1.b., is a direct obligation of the



Contracting Party. This is a clarifying change, and does not substantively alter the effect of the current section 3.3.1.b.

Net or Set-Off - Terms and Conditions

The Amendments change the current defined term “Set-Off” to “Net or Set-Off”, and update the definition. The Amendments make corresponding changes throughout the Terms and Conditions, to reflect the revised defined term and rely on the defined term wherever applicable.

The Amendments also enhance the “deemed performance” section that is designed to give finality to a Defaulting Contracting Party following the Liquidation and Close-out Procedures. Finally, the Amendments remove the “present value” concept in determining the final net settlement amount following the Liquidation and Close-out Procedures, to reflect that ICE NGX will determine the net settlement amount based on the outcome of the Liquidation and Close-out Procedures.

Authority to Act in a Default and Event of Default - Terms and Conditions

The Amendments explicitly include, in the list of actions authorized in a Contracting Party Default, the authority to decline to enter into transactions with the Defaulting Party and to limit or restrict the Defaulting Party’s trading permissions. These actions are currently authorized under other provisions of the CPA; ICE NGX is including them in this list for greater transparency.

Automatic Event of Default and Communication of Event of Default - Terms and Conditions

The Amendments specify that an Event of Default is triggered automatically in respect of a Contracting Party upon the occurrence of a bankruptcy-related event. We note that the description of bankruptcy-related events is not being changed. We note further that no change is being made to the consequences of an Event of Default - i.e., the authority for ICE NGX to take action as a result of an Event of Default, including an automatic Event of Default, continues to be discretionary and not automatic.

As a consequence of this change, the Amendments specify that no declaration is required by ICE NGX, and notice is required to be given to the Contracting Party, in the case of an automatic Event of Default. Corresponding amendments are also made to certain other provisions to clarify that a Final Invoice may be “made available” and not necessarily “issued”.

Contingent Revocation Obligations

The Amendments specify that the Exchange may withhold payment of a final net settlement amount to a Defaulting Party if the Exchange has reasonable belief of an impending Revocation of Environmental Products for which the Defaulting Party is the Warranting Seller.

Concurrent Demands under the Deposit Agreement

The Amendments specify the pro rata determination of concurrent demands in respect of the USD 200 million letter of credit held by the Escrow Agent in escrow for all Contracting Parties, which provides liquidity for ICE NGX’s guarantee fund. This provision reflects the corresponding description and process under the Amended and Restated Deposit Agreement, which became effective March 15, 2024. These Amendments are intended to provide greater legal certainty and transparency to Contracting Parties in respect of demands on the letter of credit.

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Invoices and Taxes

The Amendments make certain non-substantive correcting and conforming changes to Article 7 [Invoices and Taxes].

Description of Variation Margin

The Amendments to Schedule C and Schedule E of the CPA enhance the description of Variation Margin and MTM Settlement Amount. These Amendments are intended to provide greater clarity and transparency to Contracting Parties, and do not reflect any change in the determination, treatment or valuation of Variation Margin. Specifically, the Amendments clarify that:

- Variation Margin reverts to zero at contract expiry, and
- mark-to-market gains and losses that are crystallized as MTM Settlement Amount are no longer included in “Variation Margin”.

Title of Schedule C

The Amendments rename Schedule “C” to the CPA from “Risk Management Policy” to “Collateral and Risk Management”.

3. Compliance with Core Principles

ICE NGX reviewed the Amendments and determined that they comply with the rules and regulations of the Commission. In this regard, ICE NGX reviewed the derivatives clearing organization (“DCO”) core principles (each a “Core Principle”) and determined that the Amendments are potentially relevant to the following Core Principles and applicable regulations of the Commission thereunder.

Compliance (Core Principle A): The Amendments are consistent with Core Principle A - Compliance and Commission Regulation 39.10, as the Amendments clarify and enhance ICE NGX’s policies and procedures for complying with Commission regulations and internal policies.

Participant and Product Eligibility (Core Principle C): The Amendments are consistent with Core Principle C - Participant and Product Eligibility and Commission Regulation 39.12(a)(1)(i), as the Amendments clarify provisions of the CPA that relate to ICE NGX’s Minimum Qualifying Requirements in a manner that (i) is more transparent, (ii) is not more restrictive than necessary to achieve the same objective, and (iii) does not materially increase risk the clearinghouse.

Risk Management (Core Principle D): The Amendments are consistent with Core Principle D - Risk Management and Commission Regulations

- § 39.13(h)(6) as the Amendments to Article 5 of the Terms and Conditions more explicitly set out ICE NGX’s discretionary authority to act in a Default or Event of Default;
- § 39.13(h)(6) as the Amendments to section 10 of Schedule C explicitly specify ICE NGX’s discretionary authority to withhold settlement payments owing to a Defaulting Contracting Party.

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Settlement Procedures (Core Principle E): The Amendments are consistent with Core Principle E - Settlement Procedures and Commission Regulation § 39.14 generally, as the Amendments to Article 7 of the Terms and Conditions update the invoicing-related provisions to reflect that a Final Invoice is payable whether or not “issued” or “made available”.

Default Rules and Procedures (Core Principle G): The Amendments are consistent with Core Principle G - Default Rules and Procedures and Commission Regulation § 39.16(a) and (c) generally, as the Amendments to

- the Terms and Conditions update and clarify the definition of Failure to Pay and the procedures relating to a Failure to Pay, which is an automatic trigger for a default under the CPA;
- Article 5 specify that an Event of Default is automatically triggered upon the bankruptcy or similar action relating to a Contracting Party, and make corresponding amendments to specify the resulting procedures;
- the Terms and Conditions relating to Netting and Set-Off update the procedures relating to determining a net settlement amount and clarify that a Final Invoice is payable whether or not “issued” or “made available”;
- section 5.12 of the Terms and Conditions codify the determination of concurrent demands upon the letter of credit that provides liquidity for ICE NGX’s guarantee fund;
- Article 5 of the Terms and Conditions codify ICE NGX’s practices in relation to returning collateral following a liquidation, and withholding a net settlement amount following a liquidation due to contingent Revocation Obligations; and
- Article 5 of the Terms and Conditions update, clarify and enhance the transparency of ICE NGX’s rules and procedures relating to Defaults, Events of Default and the liquidation and close-out of a Defaulting Contracting Party’s portfolio.

4. Certifications

ICE NGX certifies that the proposed Amendments discussed in this submission comply with the Commodity Exchange Act, including the Core Principles and the Regulations of the Commission thereunder. ICE NGX is not aware of opposing views expressed regarding the Amendments. ICE



NGX further certifies that, concurrent with this filing, a copy of this submission was posted to ICE NGX's website.

Yours truly,

A handwritten signature in black ink, appearing to read 'M. McGregor', with a horizontal line extending to the right from the end of the signature.

By: Martin McGregor
Title: General Counsel & CCO
Date: April 5, 2024



APPENDIX A

AMENDMENTS TO THE ICE NGX CONTRACTING PARTY AGREEMENT

TERMS AND CONDITIONS

[Note: Insertions are underlined, deletions are struck through.]

ARTICLE 1 – DEFINITIONS AND INTERPRETATION

1.2 Definitions

“ICE NGX Indices” means the indices and index families administered by ICE NGX, as described on Exchange’s website;

“Lien” means a security interest, lien, mortgage, charge, pledge, hypothecation, right of Netting or Set-Off or assignment or transfer by way of security;

“Net or Set-Off” means, at the option of the Exchange, any one or more of the following: to net, set-off, offset, combine combination-of accounts, ~~right-of retention or retain,~~ deducting, debit, credit, netting, recouping, withholding or similar right or requirement to which the Exchange a party is entitled ~~or subject~~ (whether arising under this Agreement, any Transaction, applicable law or otherwise), and grammatical variations thereof have the corresponding meaning ~~that is exercised by, or imposed on, such party;~~

...

1.4 Miscellaneous

...

- e. Netting and Set-Off – Each of the Contracting Party and Exchange intend and agree that each and every Transaction cleared by and subject to the rules of ICE NGX acting as a registered Derivatives Clearing Organization be subject to the ~~netting~~ Netting and Set-Off provisions of this Agreement sections 5.14 and 5.15 including in Article 5 of the Agreement.

...

ARTICLE 3 – GENERAL OBLIGATIONS

...

3.3 Eligible Collateral Support and Collateral

- a. Eligible Collateral Support and Collateral – Each Contracting Party shall to provide from time to time, as security for the Contracting Party’s Obligations, and in such amounts, such forms, at such times and in accordance with such systems as may be prescribed by or pursuant to this Agreement, including Schedule “C”, or Exchange’s stated policies in respect thereof, credit support consisting of one or more of the following: (i) an irrevocable letter of credit issued by an Approved Financial Institution in favour of Exchange in a form acceptable to Exchange; or (ii) Cash Collateral (collectively, “Eligible Collateral Support”).

In addition, Exchange may, in its discretion, withhold payables or any other amounts owing to the Contracting Party or its Contracting Party Affiliates from Exchange as additional Collateral and may otherwise ~~Net or Set-Off deduct, net, recoup, setoff, or otherwise credit~~ any such payables, other amounts, or obligations against payables or other amounts or obligations owing by the Exchange to the Contracting Party or its Contracting Party Affiliates, and the Contracting Party hereby consents to any such ~~Netting or Set-Off withholding, deduction, netting, recoupment, setoff, or credit~~ on behalf of itself and its Contracting Party Affiliates.

...

- e. Exercising on Collateral – Upon a Default with respect to any Contracting Party, Exchange shall also be entitled to:

...

- (ii) sell, retain, liquidate, apply, collect on and, except as Exchange may otherwise agree, ~~Net or Set-Off set-off~~ any or all Collateral against any outstanding Obligations owed to Exchange by the Contracting Party or any of its Contracting Party Affiliates;

...

3.3.1 Contracting Party Affiliates

- a. ~~Net or~~ Set-Off – The Contracting Party hereby agrees that Exchange shall be entitled to ~~Net or~~ Set-Off all Obligations payable or to be performed by Exchange to the Contracting Party or, except as Exchange may otherwise agree, any of its Contracting Party Affiliates, under any Transaction or this Agreement (or any Transaction or any Contracting Party Agreement entered into between Exchange and any Contracting Party Affiliate), whether under Sections 5.5, 5.6, 8.2 or 8.3 or otherwise and whether or not matured or contingent and irrespective of the currency or place of payment, against any Obligations payable or to be performed by the Contracting Party of any of its Contracting Party Affiliates to Exchange under any Transaction or this Agreement (or any Transaction or any Contracting Party Agreement entered into between Exchange and any Contracting Party Affiliate). The contractual right of ~~Net or~~ Set-Off hereby granted is in addition to any legal or equitable right of set-off ~~or any similar right~~ granted at law, and does not require for its exercise any mutuality or connection, other than that hereby created, between the



Obligations Netted or Set-Off. If an obligation or right is unascertained at the time of any such Net or Set-Off, Exchange may in good faith estimate the amount or value of such obligation or right, in which case Net or Set-Off will be effected on the basis of such estimate and the relevant party shall account to the other party if such obligation or right at any time thereafter is ascertained.

- b. Guarantee of Contracting Party Affiliate – The Contracting Party hereby unconditionally and irrevocably guarantees (the “Guarantee”) the due and punctual payment and performance in full when due, whether in the ordinary course, by termination, acceleration or otherwise, of all Obligations of its Contracting Party Affiliates to Exchange under the Contracting Party Agreements entered into by such Contracting Party Affiliates, and all such guaranteed obligations are and shall be direct obligations of the Contracting Party. All Collateral provided by a Contracting Party to Exchange hereunder (including without limitation all letters of credit) is provided not only to secure the performance of the Contracting Party’s Obligations hereunder, but also to secure the Contracting Party’s performance of the Guarantee. Except as Exchange may otherwise agree, the Contracting Party acknowledges and agrees that Exchange may realize on the Collateral provided by it to Exchange hereunder (including without limitation drawing upon any letters of credit) to pay and perform the Contracting Party’s Guarantee. This Guarantee is one of payment and not of collection. This Guarantee is irrevocable and shall remain in full force and effect and be binding upon the Contracting Party, its successors and assigns during the term of this Agreement and until all of the Obligations of its Contracting Party Affiliates have been satisfied in full. Upon the occurrence of a Default with respect to any Contracting Party or, except as Exchange may otherwise agree, any Contracting Party Affiliate, Exchange shall be entitled to draw upon any letter of credit provided to it by the Contracting Party to pay the Obligations and the Guarantee that are due.

...

~~3.9 Contracting Party Event of Default~~

- ~~a. Event of Default Exchange may declare an Event of Default in respect of the Contracting Party on the occurrence and continuation of the following events:~~

~~(i) Default by Contracting Party or Contracting Party Affiliate~~

[Note: The text in this paragraph is moved to subsection 5.7.a. by amendments self-certified March 5, 2024 and further moved to subsection 5.7.b. by these present amendments.]

~~(ii) Credit Support Default~~

[Note: The text in this paragraph is moved to subsection 5.7.a. by amendments self-certified March 5, 2024 and further moved to subsection 5.7.b. by these present amendments.]

~~(iii) Misrepresentation~~



[Note: The text in this paragraph is amended and moved to subsection 5.7.a. by amendments self-certified March 5, 2024 and further moved to subsection 5.7.b. by these present amendments.]

~~(iv) Bankruptcy~~

[Note: The text in this paragraph is moved to paragraph 5.7.a.(vi) by amendments self-certified March 5, 2024 and further amended and moved to paragraph 5.7.a.(i) by these present amendments.]

~~b. Notification of Event of Default – As soon as practicable after declaring an Event of a Default in respect of a Contracting Party, Exchange will:~~

~~(i) notify the Defaulting Party (except that no notice is required where such Defaulting Party becomes insolvent or is unable to pay its debts or institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy);~~

~~(ii) notify each applicable regulatory authority as required under applicable Regulations; and~~

~~(iii) publish a notice on Exchange’s website that an Event of Default has been declared in respect of the Contracting Party, as required under applicable Regulations.~~

[Note: The text in this subsection is moved to subsection 5.7.b. by amendments self-certified March 5, 2024 and further amended and moved to subsection 5.7.c. by these present amendments.]

...

ARTICLE 5 - FAILURE, DEFAULT AND LIQUIDATION AND CLOSE-OUT PROCEDURES

...

5.6 Contracting Party Default

...

b. Exchange Authority to Act – On the occurrence, [continuation](#), or upon Exchange becoming aware, of a Default by a Contracting Party, Exchange may, in its sole discretion, take any or any combination of the following actions, with or without prior notice to the Contracting Party and, if prior notice is not given, Exchange will endeavour to promptly notify the Contracting Party after taking any such action:

...

[\(ii\) decline to enter into any Transactions with the Defaulting Party;](#)

- (iii) limit or restrict the Defaulting Party's trading permissions in one or more products;

[Note: The subsequent paragraphs of subsection 5.6.b. will be renumbered to reflect the change described above.]

5.7 Contracting Party Event of Default

- a. Automatic Event of Default - An Event of Default occurs automatically in respect of a Contracting Party upon the occurrence or continuation of any of the following, and no declaration of Event of Default is required to be made by Exchange for the Event of Default to occur and no notification to the Contracting Party in respect of the Event of Default is required to be made to the Contracting Party.

- (i) Bankruptcy – The Contracting Party or any Contracting Party Affiliate, Credit Support Provider or Specified Entity of the Contracting Party; (1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4)(A) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organization or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official, or (B) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in clause (A) above; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets; (8) causes or is subject to any event that, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or (10) in the case of a bank, trust and loan company, credit union, treasury branch, caisse populaire or similar entity, (i) is taken control of, under the relevant applicable legislation, by a regulator, supervisor or any similar official with primary prudential oversight over it; (ii) is the subject of an order for the winding up of the entity or the resolution of the entity,

which may include any of (A) vesting the shares or debt of the entity in a regulatory or supervisory body, (B) appointing a receiver in respect of the entity, (C) its deposit liabilities are assumed by a bridge institution, or (D) converting the shares or debt of the entity; (iv) causes or is subject to any event that, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive) or clause (10) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts;

[Note: The subsequent subsections of subsection 5.7. will be renumbered to reflect the change described above.]

b. Exchange may Declare Event of Default - Exchange may declare an Event of Default in respect of the Contracting Party on the occurrence and **or** continuation of the following events:

...

~~(iv) **Bankruptcy** — The Contracting Party or any Contracting Party Affiliate, Credit Support Provider or Specified Entity of the Contracting Party; (1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4)(A) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organization or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official, or (B) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in clause (A) above; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets; (8) causes or is subject to any event that, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or (10) in the case of a bank, trust and loan company, credit union, treasury branch, caisse populaire or similar entity, (i) is~~

~~taken control of, under the relevant applicable legislation, by a regulator, supervisor or any similar official with primary prudential oversight over it; (ii) is the subject of an order for the winding up of the entity or the resolution of the entity, which may include any of (A) vesting the shares or debt of the entity in a regulatory or supervisory body, (B) appointing a receiver in respect of the entity, (C) its deposit liabilities are assumed by a bridge institution, or (D) converting the shares or debt of the entity; (iv) causes or is subject to any event that, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive) or clause (10) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts;~~

[Note: Subsequent paragraphs in subsection 5.7.b. will be renumbered to reflect the change described above.]

...

bc. ~~Notification~~ Communication of Event of Default –

- (i) ~~Notwithstanding that no notification of Event of Default is required to be made to the Contracting Party in respect of an automatic Event of Default pursuant to Section 5.7.a., Exchange will make best efforts to inform the Contracting Party after Exchange becomes aware that an automatic Event of Default has occurred.~~
- (ii) ~~As soon as practicable after declaring an Event of a Default in respect of a Contracting Party in accordance with Section 5.7.b., Exchange will:~~ notify the Defaulting Party. ~~(except that For greater certainty, no notice is required where an Event of Default exists for the Defaulting Party under Section 5.7.a. such Defaulting Party becomes insolvent or is unable to pay its debts or institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy);~~
- (iii) ~~Exchange will~~ notify each applicable regulatory authority as required under applicable Regulations. ~~;~~ ~~and~~
- (iv) ~~Exchange will~~ publish a notice on Exchange's website that an Event of Default has been declared in respect of the Contracting Party, as required under applicable Regulations.

Failure by Exchange to satisfy any of the foregoing clauses (i) through (iv) shall not affect the occurrence or existence of any Event of Default, and Exchange shall not be required to satisfy any such clause if prohibited from doing so by applicable law.

d.e. Exchange Authority to Act – On the declaration or occurrence or at any time during the existence of ~~Upon declaring an~~ Event of Default in respect of a Contracting Party, and without further notice or formality prescribed by law or otherwise, all of which are hereby waived by the Defaulting Party to the extent permitted by applicable law, Exchange may,



in its sole discretion and in addition to any rights or remedies under 5.6.b. and elsewhere in this Agreement or at law, equity or otherwise, without limitation:

...

- (vi) with respect to the Defaulting Party's Transactions,
 - (A) terminate any Transaction,
 - (B) ~~net or offset~~ Net or Set-Off the Defaulting Party's offsetting positions ~~in the same contract~~;
 - (C) invoke the Liquidation and Close-out Procedures;

...

5.8 Liquidation and Close-out Procedures

- a. Liquidation and Close-out Procedures – Exchange may, in its sole discretion, enter into Transactions, on- or off-Exchange and in such manner and on such terms as may be then available to Exchange, to

...

- (ii) ~~replace some or all of the Defaulting Party's Transactions and offset~~ Net or Set-Off, in whole or in part, the Defaulting Party's Obligations under any Transactions that Exchange has determined to close-out (each resulting Transaction a "Close-out Transaction").

...

- c. Effect of Liquidation Transactions and Close-Out Transactions – Upon Exchange entering into a Liquidation Transaction or Close-out Transaction, the Defaulting Party's Obligations under the Transactions (the "Offset Transactions") that were ~~offset or replaced~~ Netted or Set-Off, in whole or in part, by the Liquidation Transactions or Close-out Transactions will be deemed terminated and Exchange will assume all of the rights of the Defaulting Party under the Offset Transactions.
- d. Deemed Performance – The Defaulting Party will be deemed to have performed its payment and performance Obligations, as applicable, under all Liquidation Transactions and Close-out Transactions only if and to the extent Exchange determines that the applicable amounts have been irrevocably allocated to its ~~the Defaulting Party's~~ account and under that portion or all of the Offset Transactions ~~which are~~ only if and to the extent Exchange determines that the applicable amounts have been irrevocably Netted or Set-Off ~~offset~~ by such Liquidation Transactions or Close-out Transactions. No such deemed performance shall apply, and any such deemed performance shall be automatically void,



in the event any such allocation or Netting or Set-Off is appealed, stayed, reversed, negated, voided or modified in any respect.

...

5.9 Default Auction Procedures

...

- h. Exchange Not Liable – Exchange will not be liable to any person for any recompense or damages if a Bidder's bid is accepted or is not accepted for some or all of the positions specified in the bid.

...

5.10 Final Close-out Netting ~~and or~~ Set-Off

- a. Determining a Net Settlement Amount –

- (i) ~~To arrive at~~ In the event Exchange determines a single net settlement amount payable by or to the Defaulting Party, Exchange will Net or Set-Off

...

- (ii) If the net settlement amount calculated under paragraph 5.10.a.(i) is payable by the Defaulting Party to Exchange, Exchange will ~~issue~~ make available a Final Invoice to the Defaulting Party for that net settlement amount in accordance with Section 5.11. For the avoidance of doubt, failure by Exchange to make a Final Invoice available does not affect the validity of the obligations of the Defaulting Party to Exchange.

- (iii) To the extent that the net settlement amount calculated under paragraph 5.10.a.(i) is payable by Exchange to the Defaulting Party, Exchange will further Net or Set-Off that amount against any then-outstanding Unsatisfied Revocation Obligations of the Defaulting Contracting Party under Physically Settled Environmental Products. If the residual amount following this Netting or Set-Off is payable

...

- ~~d. Present Value – Any such amounts which are immediately due and payable, but would have been payable at a future date except for the provisions of this Article 5, will be discounted to present value at the rate of interest determined by Exchange acting in a commercially reasonable manner.~~

5.11 Final Invoice

- a. Final Invoice – Exchange will forthwith ~~issue~~ make available to the Defaulting Party an Invoice (“Final Invoice”) ~~to the Defaulting Party~~ reflecting the net settlement amount due to or from the Defaulting Party. Any Netting or Set-Off in any Final Invoice shall be automatically effective as of the date of the Final Invoice, without regard to whether the Final Invoice was made available, and, for the avoidance of doubt, failure by Exchange to make a Final Invoice available does not affect the validity of the obligations of the Defaulting Party to Exchange.
- b. Net Settlement Amount Owing by Defaulting Party – ~~A Final Invoice~~ If the net settlement amount is owing from the Defaulting Party to Exchange, the net settlement amount is payable within two Business Days from the date the Final Invoice was made available issued.
- c. Net Settlement Amount Owing by Exchange – ~~A Final Invoice~~ If the net settlement amount is owing from Exchange to the Defaulting Contracting Party and is not subject to challenge or dispute, the net settlement amount is payable on the next applicable settlement date after the Final Invoice was made available.
- d. Return of Remaining Eligible Collateral Support – If the ~~Final Invoice~~ net settlement amount is due owing from Exchange to the Defaulting Party and is not subject to challenge or dispute, Exchange will return any remaining Eligible Collateral Support to the Defaulting Party in accordance with Schedule C - Risk Management Policy.
- e. Full Satisfaction – The payment or receipt by the Contracting Party of the Final Invoice amount to or from Exchange, incorporating any applicable Netting or Set-Off, will constitute full satisfaction of the net settlement amount in respect of the Obligations payable to or receivable by the Defaulting Party and Exchange, other than in respect of any applicable Seller's Warranty.
- ...
- g. Contingent Revocation Obligations – Notwithstanding paragraphs c., d. and e., Exchange may withhold payment of a net settlement amount owing to the Defaulting Party or withhold the return of remaining Eligible Collateral Support to the Defaulting Party if Exchange has reasonable belief of an impending Revocation of Environmental Products for which the Defaulting Party is the Warranting Seller.

5.14 Remedies Upon an Unremedied Exchange Default or Exchange Bankruptcy Event of Default



- d. Net Termination Payment Amount — As soon as practicable following the Early Termination Date and in no event later than five (5) days following the Early Termination Date, Exchange shall aggregate, and Net or Set-Off ~~and net~~ all Gains and Losses along with all other Obligations owed by Exchange to the Contracting Party under the Agreement (“Receivables”) and all payables owed by the Contracting Party to Exchange under the Agreement (“Payables”) to reduce all such amounts to a single net amount (the “Net Termination Payment”) and notify the Contracting Party in writing of the Net Termination Payment owed to or owing by the Contracting Party (the “Termination Notice”). (For clarity, the Netting or Set-Off ~~and netting~~ of all Gains and Losses along with all other Obligations owed by Exchange to the Contracting Party under this Agreement shall be deemed to be equivalent to a single master netting agreement.) To the extent that the Contracting Party is owed a Net Termination Payment by Exchange, Exchange shall pay the Net Termination Payment to the Contracting Party as soon as practicable, making commercially reasonable efforts to pay such Net Termination Payment within ten (10) Business Days of receipt by the Contracting Party of the Termination Notice regarding such calculation. To the extent that the Contracting Party owes a Net Termination Payment to Exchange, the Contracting Party shall pay the Net Termination Payment to Exchange within two (2) Business Days of receipt of the Termination Notice. In the event that Exchange has not provided a Termination Notice to the Contracting Party within the five (5) day period set forth above, the Contracting Party shall have the right to calculate its Gains or Losses, as the case may be, for the Terminated Transactions, by determining a Price for each such Terminated Transaction, such Price being a good faith commercially reasonable representation of market value, which value may be disputed in good faith.

...

ARTICLE 7 - INVOICES AND TAXES

7.1 Invoices

- a. Netting of Invoice Amounts — In determining the net amounts payable or receivable on each Invoice by the Contracting Party, Exchange will Net or Set-off the amounts payable or receivable in the same currency on account of
- ...
- b. Preliminary Invoices – Exchange will post on Exchange’s Website for sole access by the Contracting Party an Invoice in each applicable currency setting forth a net amount owing by or to the Contracting Party, itemizing and applying Net or Set-off to each amount payable or receivable in the same currency:
- ...
- e. Invoices Due and Payable – Subject to any amount hereunder becoming due and payable at an earlier time pursuant to the provisions of this Agreement, the amount of the Invoice owned by the Contracting Party to Exchange or to the Contracting Party by Exchange as



shown on the applicable Invoice after the expiry of the applicable period set out in paragraph b. will be due and payable prior to 12:00 p.m. Mountain Prevailing Time:

...

- (vii) for any Final Invoice ~~issued in accordance with Article 5~~, within two Business Days from the date the Final Invoice was made available ~~issued~~.

...

7.2 Payment of Invoices

- a. Wire Payment of Invoices for Physically Settled Gas Futures Transactions, ~~and~~ Physically Settled Power Futures Transactions and Final Invoices –

- (i) ~~Except as~~ Unless otherwise agreed between the Exchange and the Contracting Party, payment of Invoices for Physically Settled Gas Futures Transactions and Physically Settled Power Futures Transactions, and any Final Invoice ~~issued in accordance with Article 5~~, by Contracting Party to Exchange and by Exchange to Contracting Party shall be made by wire payment to the banking instructions provided in accordance with this Agreement and Exchange's stated policies. For greater certainty, any correspondent or intermediary bank fees relating to payments of Invoices for Physically Settled Gas Futures Transactions and Physically Settled Power Futures Transactions, and any Final Invoice, by Contracting Party to Exchange and by Exchange to Contracting Party, ~~and any Final Invoice issued in accordance with Article 5~~, are the responsibility of the Contracting Party.
- (ii) On each Physical Settlement Date, Exchange will Net or Set-Off any and all such amounts owing as between the Exchange and the Contracting Party in the same currency in respect of Physically Settled Gas Futures Transactions, Physically Settled Power Futures Transactions and any applicable fees or taxes due and payable that day to arrive at a single net settlement amount payable per currency by Exchange to the Contracting Party or by the Contracting Party to Exchange.

- b. Payment of Invoices for MTM Settlement Amounts, Daily Financially Settled Futures Amounts, Cash Settlement Amounts, Futures Clearing Amounts and Physically Settled Environmental Futures Transactions –

...

- (iii) On each Business Day, Exchange will Net or Set-Off any and all such amounts owing as between the Exchange and the Contracting Party in the same currency in respect of MTM Settlement Amounts, Daily Financially Settled Futures Amounts, Cash Settlement Amounts, Futures Clearing Amounts and any other applicable



fees or taxes due and payable that day to arrive at a single net settlement amount payable per currency by Exchange to the Contracting Party or by the Contracting Party to Exchange.

...

- d. Early Payment of Invoices – A Contracting Party may, if desired, make payment to Exchange prior to the applicable Settlement Date, and such funds, when received, will be applied against the Contracting Party's Invoice amounts, or may be [Net or](#) Set-off against amounts then owed by the Contracting Party to Exchange in accordance with this Agreement.

...

AMENDMENTS TO THE ICE NGX CONTRACTING PARTY AGREEMENT

SCHEDULE C - RISK MANAGEMENT POLICY

[Note: Insertions are underlined, deletions are struck through.]

...

12. Contracting Party Affiliate Netting

...

- b. Affiliate Waiver – Exchange may, in its sole discretion and upon request of the Contracting Party, agree not to net the Contracting Party's Transactions and Net Open Positions ~~netted~~ with those of the Contracting Party's affiliates.

APPENDIX B

AMENDMENTS TO THE ICE NGX CONTRACTING PARTY AGREEMENT

TERMS AND CONDITIONS

[Note: Insertions are underlined, deletions are struck through.]

ARTICLE 1 - INTERPRETATION

...

1.2 Definitions

“Failure to Pay” means

- (i) in respect of a Contracting Party, the failure of the a-Contracting Party or Exchange to make payment of any amount owing to Exchange under any Invoice ~~issued or otherwise~~ in accordance with this Agreement; and
- (ii) in respect of Exchange, the failure of Exchange to make payment of any amount owing to the Contracting Party under any Invoice in accordance with this Agreement;

...

ARTICLE 2 - REPRESENTATIONS AND WARRANTIES

2.3 Of the Contracting Party: Qualification and Status

The Contracting Party represents and warrants that: (a) the Contracting Party is, and will at all times during the term of this Agreement be, a corporation, partnership, organization, trust or other business entity with a net worth exceeding \$5,000,000 or total ~~tangible~~ assets exceeding \$25,000,000, as shown on its latest balance sheet, or is controlled, directly or indirectly, by one or more of any such business entities (the “Minimum Qualification Requirement”), and comply with any other conditions or requirements imposed by Exchange, whether pursuant to the Risk Management Policy or otherwise, as part of the Contracting Party’s initial qualification to transact through Exchange or after being granted access to the ICE NGX Trading System and ICE NGX Clearing System; (b) the information provided by the Contracting Party in the Application is true and correct as of the date noted in the Application and the information provided to Exchange by the Contracting Party from time to time as required by or as permitted under this Agreement will be true and correct as of the date of such information; and (c) the Contracting Party will provide upon request to Exchange all Regulatory Approvals applicable to it (or its investment manager or adviser, if any) in the jurisdiction of organization residence of the Contracting Party (or such investment manager or adviser), or any other information, including without limitation, regarding its corporate structure, governance, credit status or solvency, as may be reasonably required by Exchange.

...

ARTICLE 5 - RECOURSE AND LIABILITY

...

5.2 Failure to Pay

...

- b. By Exchange – In the event of a Failure to Pay by Exchange that is (i) not rectified by Exchange within three (3) Business Days of ~~the receipt~~ by Exchange from a Contracting Party of a notice of Failure to Pay by Exchange and (ii) not satisfied by payment from the Escrow Agent in respect of a Direction to Pay pursuant to, and as defined in, the Deposit Agreement, Exchange will pay to the ~~Seller~~ Contracting Party an amount equal to:
- (i) the Failure Amount; plus
 - (ii) interest from the date of the occurrence of the Failure to Pay at the Default Rate to and including the date of payment to the ~~Seller~~ Contracting Party of all such amounts.

The ~~Seller~~ Contracting Party will ~~deliver to notify~~ Exchange in writing a separate Invoice in respect of the Failure to Pay itemizing separately of the amounts payable under (i) and (ii), itemizing those amounts separately.

...

5.12 Deposit Agreement

...

- f. Concurrent Outstanding Demands – In the event the Escrow Agent has received a Direction to Pay Same-Day, Direction to Pay or Contracting Party’s Demand pursuant to which payment has not yet been made in accordance with the Deposit Agreement (each an “Outstanding Demand”), and the Escrow Agent receives one or more additional Directions to Pay Same-Day, Directions to Pay or Contracting Party’s Demands (each an “Additional Demand”) (together, the Outstanding Demands and Additional Demands, “Demands”) and the aggregate amount of the Demands exceeds the amount then available for drawdown under the ICE NGX Letter of Credit, in accordance with the Deposit Agreement:
- (i) The Escrow Agent shall not make payment on a Demand until the processes described in paragraphs (ii) and (iii) have been determined and/or completed.
 - (ii) The Escrow Agent will notify the Contracting Party Payee under each Demand of the aggregate amount of all such Demands.

- (iii) The amounts payable to each such Contracting Party under the Demands shall be made as follows:
- (A) the amounts payable under all Demands received within five (5) Business Days from the date the Escrow Agent received the first Outstanding Demand (the “First Outstanding Demand”) will be prorated as a proportion of the total of all Demands received by the Escrow Agent with that five (5) Business Day period; and
- (B) if, following the preceding step, an amount remains available for drawdown under the Guarantee Fund Letters of Credit, the amounts payable under all Demands received between six (6) and thirty (30) Business Days from the date the Escrow Agent received the First Outstanding Demand will be prorated as a proportion of the total of all Demands received within that six (6) to thirty (30) Business Day period.

...

ARTICLE 7 - INVOICES AND TAXES

7.1 Invoices

...

- c. Disputed Invoice Items – Any items on any Invoice disputed by any Contracting Party must be noted to Exchange:
- (i) ~~For~~for Invoices for Physically Settled Gas Futures Transactions, no later than the close of business on the fourth Business Day following the 15th of the month;
 - (ii) ~~For~~for Invoices for Physically Settled Power Futures Transactions, no later than the close of business on the fourth Business Day following the 15th of the month;
 - (iii) for Invoices for Physically Settled Environmental Futures Transactions, no later than the close of business on the second Business Day prior to the Environmental Settlement Date;
 - (iv) ~~For~~for Invoices for Daily Financially Settled Futures Transactions, no later than one Business Day prior to the Settlement Date;
 - (v) ~~For~~for Invoices for all other Financially Settled Futures Transactions, no later than one Business Day prior to the Settlement Date;
 - (vi) ~~For~~for Invoices for Option Transactions, no later than one Business Day prior to the Premium Payment Date; and
 - (vii) ~~For~~for Invoices for Forward (Bilateral) Transactions, no later than the close of business on the fourth Business Day following the 15th of the month.

AMENDMENTS TO THE ICE NGX CONTRACTING PARTY AGREEMENT

SCHEDULE “C” - COLLATERAL AND RISK MANAGEMENT ~~POLICY~~

[Note: Insertions are underlined, deletions are struck through.]

...

2. Determination of Margin and Margin Rates

- a. Initial Margin Rate – Exchange may determine the Initial Margin Rate applicable to each Product, from time-to-time, and such Initial Margin Rates will be determined at the sole discretion of Exchange;
- b. Variation Margin – In determining Variation Margin, Exchange will consider the reasonable estimation of the current market value using internal and external sources for each Product. Upon request or dispute by a Contracting Party, Exchange will investigate and determine, in its sole discretion, whether Variation Margin should be recalculated and will advise the Contracting Party of its determination as soon as reasonably practicable.
- c. Variation Margin does not include MTM Settlement Amount – For greater certainty, for the purposes of calculating Margin Requirements under this Agreement including this Schedule “C”, “Variation Margin” does not include any portion of mark-to-market gains or losses that has been determined as the MTM Settlement Amount in accordance with Schedule “E”.
- d. Variation Margin at Contract Expiry – For further certainty, at contract expiry, Variation Margin reverts to zero under
 - (i) physically settled futures products, as the positions move into delivery at the traded price and delivered positions begin being reflected in Current Month Accounts Net Payable; and
 - (ii) financially settled products, as positions are financially settled based on the price on the last settlement date.

...

AMENDMENTS TO THE ICE NGX CONTRACTING PARTY AGREEMENT

SCHEDULE “E” - NATURAL GAS OPTIONS AND GAS AND POWER FINANCIALLY SETTLED FUTURES TRANSACTIONS

[Note: Insertions are underlined, deletions are struck through.]

...

4. Determination of Mark-to-Market Settlement and Daily Financially Settled Futures Settlement Amounts for Daily Financially Settled Futures Transactions

a. Determination of Mark-to-Market Settlement Amount

On the Transaction Date, the mark-to-market settlement amount (“MTM Settlement Amount”) for a Daily Financially Settled Futures Transaction is the result obtained by subtracting the Settlement Price (SP) from the Fixed Price (FP) times the Calculation Period (CP) times the Notional Quantity (NQ); $(FP - SP) \times CP \times NQ$.

On each Business Day following the Transaction Date, for the applicable Term of a Daily Futures Transaction, the MTM Settlement Amount is the result obtained by subtracting the Settlement Price (SP) from the Prior Settlement Price (SPP) times the Calculation Period (CP) times the Notional Quantity (NQ); $(SPP - SP) \times CP \times NQ$.

For greater certainty, once the MTM Settlement Amount is determined, that portion of the market-to-market gains or losses is no longer considered part of “Variation Margin” for the purposes of calculating Margin Requirements under this Agreement including Schedule “C”.

If the MTM Settlement Amount (expressed in CAD or USD) is greater than 0, Fixed Price Payer agrees to pay to Floating Price Payer such MTM Settlement Amount on the MTM Settlement Date.

If the MTM Settlement Amount (expressed in CAD or USD) is less than 0, Floating Price Payer agrees to pay to Fixed Price Payer the absolute value of such MTM Settlement Amount on the MTM Settlement Date.

...